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ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-9490-7]

California State Motor Vehicle Pollution Control Standards; Amendments to the California Heavy-Duty Engine On-Board Diagnostic Regulation; Waiver Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Opportunity for Public Hearing and Comment

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its regulations related to heavy-duty engine on-board diagnostic (HD OBD) in California. By letter dated September 27, 2010, CARB requested that EPA confirm that its amendments are within-the-scope of a previous waiver of preemption issued by EPA. In the alternative, CARB requested that EPA confirm that the amendments that relax and clarify the existing HD OBD regulation are within-the-scope of a previous waiver of preemption issued by EPA and that EPA grant a new waiver of preemption for the remainder of CARB's HD OBD amendments. This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on [Insert Date 30 days from date of FR Notice] at 10:00 a.m. EPA will hold a hearing only if any party notifies EPA by [Insert Date 15 days from date of FR Notice], expressing its interest in presenting oral testimony. By [Insert date 21 days from date of FR Notice], any person who plans to attend the hearing may call David Dickinson at (202) 343-9256 to learn if a hearing will be held or may check the following website for an update: <http://www.epa.gov/otaq/cafr.htm>.

Parties wishing to present oral testimony at the public hearing should also provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public

hearing, that hearing will be held at 1310 L St, NW, Washington, D.C. 20005. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by [Insert Date 60 days from FR Notice].

ADDRESSES: EPA will make available for public inspection materials submitted by CARB, written comments received from interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket No. EPA-HQ-OAR-2011-0816. The docket is located at The Air Docket, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460, and may be viewed between 8 a.m., and 5:30 p.m., Monday through Friday. The telephone is (202) 566-1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the www.regulations.gov website, enter EPA-HQ-OAR-2011-0816 in "Search Documents" to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, D.C. 20460. Telephone: (202)343-9256, Fax: (202)343-2804, e-mail address: Dickinson.David@epa.gov.

SUPPLEMENTARY INFORMATION:

(A) Procedural History:

CARB initially adopted the HD OBD requirements in December 2005, and EPA issued a waiver of preemption in August 2008.¹ CARB's HD OBD regulation, as initially adopted, required manufacturers to install a fully compliant HD OBD system on both diesel and gasoline powered heavy-duty engines (engines used in vehicles having a gross vehicle weight rating greater than 14,000 pounds). The requirements are phased in on a single engine family for model years 2010 through 2012 before requiring manufacturers to incorporate fully compliant HD OBD systems on all 2013 and later model year engines.

CARB adopted amendments to its HD OBD regulation along with a new HD OBD enforcement regulation on April 5, 2010.² In amending the HD OBD regulation CARB, among other provisions, relaxed the malfunction thresholds until 2013 model year for three major emission controls: PM filters, NO_x catalysts, and NO_x sensors. The amendments also delay certain monitoring requirements, including those that apply to catalyst-based components, until 2013. CARB further amended the regulation to expand the monitoring requirements for EGR and boost control system strategies.

By letter dated September 27, 2010, CARB requested that EPA confirm that amendments to its HD OBD regulations are within-the-scope of a previous waiver of preemption issued by EPA.³ In the alternative, CARB requested that EPA confirm that the amendments that relax and clarify the existing HD OBD regulation (e.g. the major emission control monitoring requirements

¹ The EPA decision was signed on August 13, 2008 and published at 73 FR 52042 (September 8, 2008).

² The California Office of Administrative Law approved the amendments and the new regulation on May 18, 2010. The HD OBD requirements, as adopted in 2005, included detailed certification requirements and production engine/vehicle evaluation testing. The amended regulations, at 13 CCR section 1971.5, includes additional in-use enforcement provisions.

³ CARB's request letter can be found at EPA-HQ-OAR-2011-0816-0001. EPA's previous waiver is at 73 FR 52042 (September 8, 2008).

noted above) are within-the-scope of EPA's previous HD OBD waiver of preemption. Under this alternative request, CARB seeks a new waiver of preemption for the remainder of CARB's HD OBD amendments.

(B) Background and Discussion:

Section 209(a) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(a), provides:

No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless she finds that (A) the above-described "protectiveness" determination of the state is arbitrary and capricious, (B) the state does not need the state standard to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has previously stated that "consistency with section 202(a)" requires that California's standards must be technologically feasible within the lead time provided, given due consideration of costs, and that California and applicable federal test procedures be consistent.

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the *Federal Register*. In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA usually publishes a notice of its decision in the *Federal Register* and concurrently invites public comment if an interested party is opposed to EPA's decision.

Although CARB has submitted a within-the-scope waiver request for its HD OBD amendments EPA invites comment on the following issues. First, should California's HD OBD amendments be considered under the within-the-scope criteria or should they be considered under the full waiver criteria? Second, to the extent that not all of the HD OBD amendments should be considered under the within-the-scope criteria, should the amendments identified by CARB (as part of its alternative request) be considered under the within-the-scope criteria? Third, to the extent that HD OBD amendments should be considered as a within-the-scope request, do such amendments meet the criteria for EPA to grant a within-the-scope confirmation? Specifically, do those amendments: (a) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, or (c) raise new issues affecting EPA's previous waiver determinations? Please also provide comments to address the full waiver analysis, in the event that EPA cannot confirm that CARB's HD OBD amendments are within-the-scope of previous waivers. The full waiver analysis, which we are requesting comment on, includes consideration of the following three criteria: whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious,

(b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

PROCEDURES FOR PUBLIC PARTICIPATION: In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until [Insert Date 60 days from date of FR Notice]. Upon expiration of the comment period, the Administrator will render a decision of CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2011-0816.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing

such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: __November 4, 2011._____

Margo Tsirigotis Oge, Director
Office of Transportation and Air Quality
Office of Air and Radiation

[FR Doc. 2011-29168 Filed 11/09/2011 at
8:45 am; Publication Date: 11/10/2011]